Estate Planning: A Life and Death Necessity

An Honors Thesis (HONRS 499)

by

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Abstract

Estate planning is vital for everyone, people with possessions and especially people with minor children. It is a dynamic issue; however, with basic information the process can be simplified. This basic guide to estate taxes, planning tools, and professional advisers should be useful to anyone considering estate planning. In an attempt to explain the various planning tools, a description of several estate-planning tools and the use for that method is included. For most of the tools, advantages and disadvantages are also discussed. Estate taxes are a complex issue and should be left to an accountant; however, an understanding of exemption amounts and unified credits is helpful in estate planning. Additional professionals may also provide needed services during the estate planning process. Examples of several professionals and their role in estate planning are discussed for the reader's benefit.

Taxes are a normal part of life and an essential part of funding for our government. However, taxes are also part of death for large estates. Estates over $675,000, for the years of 2000 and 2001, are required to pay estate taxes. The amount of tax the estate owes can be greatly altered by estate plans.

If you plan for the inevitable, you can save thousands of dollars of your estate that would otherwise be paid in taxes. Most plans are ethical and legal; however, in planning an estate you should make sure the plans you have chosen fall into the ethical and legal framework. Creating an estate plan can be difficult, but with the right help and advice the process can be simplified.

FEDERAL ESTATE TAXES

Estate taxes, or death taxes, are federal taxes collected upon the value of your assets at your death, if the estate exceeds the personal exemption amount. The exemption amount will be increasing over the next five years, but choices you make today can lower your exemption amount. (Refer to Appendix A for the personal exemption amount for the current year through 2006.) By giving a gift worth more than $10,000 per person per calendar year, you reduce your exemption amount by the excess over $10,000. The benefits and rules related to gifting will be explained more fully in the discussion of gifting as an estate-planning tool.

The estate value is comprised of all your assets, including the value of insurance policies of which you are the legal owner. The estate value can exceed the personal exemption amount when taking the marital deduction. A marital deduction allows the surviving spouse to receive all the assets in the estate without paying estate tax. For the martial deduction to be valid, the surviving spouse must be a citizen of the United States. Additionally, the charitable deduction allows all assets given to charity to be excluded from the personal estate exemption amount. (Refer to Appendix B for the tax forms and some of the related schedules for an estate tax return.)

State Death Taxes

Unfortunately, the federal government is not the only entity with the power to tax. This power is also granted to state and local governments. Several states still require payment of estate tax (usually called death tax) on the value of a deceased person's property. All states but Nevada require a death tax return. Nevada does not levy a death tax. Some states still require payment of death tax from the estate, while most of the states use a "pick-up tax" which transfers some estate tax from the federal government to the state government.

Unified Tax Credit

The unified tax credit is another popular term in estate planning with which you may want to be familiar. The unified tax credit is equal to the amount of tax owed on the personal estate tax exemption amount. (Refer to Appendix A for the unified tax credit amounts for the years 2001 through 2006.) Your estate is equal to the amount you own less the debts you owe and less administrative estate fees; this figure is your "taxable estate" (Holzer and Floyd 206). You must calculate the estate tax due on the taxable estate amount and then subtract the unified credit to determine the amount of estate taxes due and owing on your estate. The unified tax credit is the tax amount equivalent to the personal exemption amount. The same types of transactions that reduce the estate exemption amount will reduce the unified credit.

An example may help to clarify. Currently, the personal estate exemption amount is $675,000 and the unified tax credit is $220,550. Susan's estate, upon her death less debts and administrative fees, is $900,000. The estate tax due on her estate is $306,800. The unified tax credit amount of $220,550 should be deducted from the tax due amount of $306.800 to determine the actual amount of tax to pay on Susan's estate. After subtracting the unified tax credit, Susan's estate owes $86,250 on an estate worth $900,000.

This amount is interesting to compare to tax tables for estate taxes because the rates begin at 18% and progress to 55% for estates over $3 million. However, in the above example the estate tax that is actually due after the unified credit is slightly less than 10% of the estate value. The values look high, but subtraction of over two hundred thousand dollars of tax helps reduce the actual percentage of tax paid on an estate.

Tax avoidance is one of the main reasons many people plan their estates. If your estate will be large, you should find ways to reduce your tax liability. Estate planning allows your loved ones to retain more of your assets than is possible without prior planning.

Estate Planning Tools

Assets can be distributed using several estate planning tools. All the tools have the same essential purpose – to ease the loss on loved ones and save as much of the deceased's estate as possible. The tools have different approaches to fulfilling this purpose. The more popular estate planning tools include wills, trusts, and insurance. Estate-planning tools can be used together to create the best plan to fit your estate needs. The distinctions and specific applications of these tools will be discussed in detail later. What is important at this time is that these tools are available and helpful in planning your estate.

Each of these plans require you to determine what is important to you and who you want your assets to go to upon your death. Additionally, subsequent events may cause you to make changes. Some plans are easy to change at a later date and others are difficult or even impossible to change.

The death of a beneficiary or the executor, a divorce, the birth of a new beneficiary, or the acquisition or disposal of assets should prompt a review of your estate plan (Spinale 78). If there are major changes, you may need to create a new estate plan. Therefore in planning, you will want to decide if you want to be locked into your choice or if it is possible for events to occur that will prompt you to make adjustments.

Wills

The most popular of the estate-planning tools is a will. A will is recommended no matter what other tools you choose. There are many functions a will serves that cannot be served by other planning tools.

A will is a legal document that states your beneficiaries and the assets you want to leave to each beneficiary. An executor, the person responsible for carrying out your wishes, should also be named in your will. If you have a minor child, you need to name a guardian in the will. Anyone with a minor child should have a will just for this fact, regardless of the size of the estate.

Wills must be in writing and must include your signature and the signature of at least two witnesses. Your witnesses' signatures show that they observed you signing your will. Your beneficiaries should be clearly identified in your will by using their full legal names and even a date of birth or address to ensure proper identification. Additionally, in preparing your will you need to display that you are of age (over 18) and that you are of sound mind. The will must be dated and the document must be typed or printed on a computer printer (Spinale 72). In many states, a handwritten will is not acceptable. Additionally, in some states a will is required to be notarized (Spinale 73).

Wills can be altered and replaced easily. An addition to a current will is called a codicil. However, the codicil should be written following the guidelines for a will, which means that the codicil should have the signatures of two witnesses and that you must be in sound mind at the time the codicil is added. If you want to make minor changes, a codicil is acceptable, but for significant changes a new will should be written to replace the previous one. A will can easily be replaced by writing a new will.

Even though a will has the advantage of being easy to change, it is has the disadvantage of probate. Probate is the process of filing with the court to have the will approved as a valid will. During this time, judges and attorneys identify assets and debts against your estate. This is also the time that challenges to the will are brought forth.

Probate is usually a long process, taking several months or even years to complete. Generally, no disbursements of assets are made to beneficiaries until probate has been completed.

Probate involves courts and is therefore a matter of public record. This means that anyone can read your will regardless of his or her affiliation to you. Although a will has benefits, it unfortunately has the disadvantages of probate and becoming public record. For more information on wills, refer to Chapter 4 of Estate Planning Basics by Attorney Denis Clifford (First Edition, copyright September 1999).

TRUSTS

Not every estate-planning tool is subject to probate and publicity. Trusts are effective transfer methods that offer choices and do not require probate, and trusts remain private even after your death. By avoiding probate, trusts also avoid the costs associated with probate, which include court costs and attorney fees. Contesting a living trust is more difficult than contesting a will (Holzer and Floyd 215).

There are many types of trusts that differ from one another is significant ways. Some trusts are revocable and some are irrevocable. A revocable trust is one that can be altered or even canceled anytime prior to your death. An irrevocable trust cannot be altered once it is established.

You may wonder why anyone would want an irrevocable trust. The main benefit of an irrevocable trust that cannot be realized by a revocable trust is that the proceeds of the trust receive significant tax breaks. Additionally, if you establish an irrevocable trust and then later face credit problems, the creditors cannot lay claim against property in the irrevocable trust (Clifford 5/18). This does not work for a revocable trust or an irrevocable trust that is established just to evade creditors. Irrevocable trusts may be advantageous, but one must ensure this is the best transfer tool before it is established.

As stated previously, revocable trusts do not provide large tax savings; however, they provide flexibility that may best fit your situation. Living trusts are established during your lifetime. You maintain control over your assets. A trust requires a trustee and in order to maintain control, you name yourself as the initial trustee of the trust.

A trust document details the property that belongs to the trust, the trustee – you as the initial trustee and a successor trustee, the trust beneficiaries, and other terms of the trust (Clifford 5/3). In addition to naming assets to the trust, you must deed property to the trust for property that has a title. For jewelry, works of art, and household possessions, all that is required to be included in the trust is for the item to be listed in the trust document. The successor trustee is responsible for dispersing the assets in the trust upon your death, if you named yourself as the initial trustee. The trust beneficiaries are the people to whom you are giving your assets. The successor trustee can also be a trust beneficiary. Additional terms of the trust should include the terms that you are "able to change the trust" at your discretion.

After your death, the trust is irrevocable. The job of the trustee is to transfer the assets as described in the trust document. This process does not require probate and the successor trustee can usually complete the task in a few weeks. Your trustee can usually begin dispersing the trust assets right after your death. After all property has transferred ownership, the trust dissolves.

Form **1041** Department of the Treasury—Internal Revenue Service

U.S. Income Tax Return for Estates and Trusts **2000**

OMB No. 1545-0092

For calendar year 2000 or fiscal year beginning , 2000, and ending , 20

A Type of entity:
- ☐ Decedent's estate
- ☐ Simple trust
- ☐ Complex trust
- ☐ Grantor type trust
- ☐ Bankruptcy estate–Ch. 7
- ☐ Bankruptcy estate–Ch. 11
- ☐ Pooled income fund

B Number of Schedules K-1 attached (see instructions) ▶

Name of estate or trust (If a grantor type trust, see page 10 of the instructions.)

Name and title of fiduciary

Number, street, and room or suite no. (If a P.O. box, see page 10 of the instructions.)

City or town, state, and ZIP code

C Employer identification number

D Date entity created

E Nonexempt charitable and split-interest trusts, check applicable boxes (see page 10 of the instructions):
- ☐ Described in section 4947(a)(1)
- ☐ Not a private foundation
- ☐ Described in section 4947(a)(2)

F Check applicable boxes: ☐ Initial return ☐ Final return ☐ Amended return ☐ Change in fiduciary's name ☐ Change in fiduciary's address

G Pooled mortgage account (see page 11 of the instructions): ☐ Bought ☐ Sold Date:

Income

Line	Description	Box	Amount
1	Interest income	1	
2	Ordinary dividends	2	
3	Business income or (loss) (attach Schedule C or C-EZ (Form 1040))	3	
4	Capital gain or (loss) (attach Schedule D (Form 1041))	4	
5	Rents, royalties, partnerships, other estates and trusts, etc. (attach Schedule E (Form 1040))	5	
6	Farm income or (loss) (attach Schedule F (Form 1040))	6	
7	Ordinary gain or (loss) (attach Form 4797)	7	
8	Other income. List type and amount	8	
9	**Total income.** Combine lines 1 through 8 ▶	9	

Deductions

Line	Description	Box	Amount
10	Interest. Check if Form 4952 is attached ▶ ☐	10	
11	Taxes	11	
12	Fiduciary fees	12	
13	Charitable deduction (from Schedule A, line 7)	13	
14	Attorney, accountant, and return preparer fees	14	
15a	Other deductions **not** subject to the 2% floor (attach schedule)	15a	
b	Allowable miscellaneous itemized deductions subject to the 2% floor	15b	
16	**Total.** Add lines 10 through 15b	16	
17	Adjusted total income or (loss). Subtract line 16 from line 9. Enter here and on Schedule B, line 1 ▶	17	
18	Income distribution deduction (from Schedule B, line 15) (attach Schedules K-1 (Form 1041))	18	
19	Estate tax deduction (including certain generation-skipping taxes) (attach computation)	19	
20	Exemption	20	
21	**Total deductions.** Add lines 18 through 20 ▶	21	

Tax and Payments

Line	Description	Box	Amount
22	Taxable income. Subtract line 21 from line 17. If a loss, see page 15 of the instructions	22	
23	**Total tax** (from Schedule G, line 7)	23	
24	**Payments: a** 2000 estimated tax payments and amount applied from 1999 return	24a	
b	Estimated tax payments allocated to beneficiaries (from Form 1041-T)	24b	
c	Subtract line 24b from line 24a	24c	
d	Tax paid with extension of time to file: ☐ Form 2758 ☐ Form 8736 ☐ Form 8800	24d	
e	Federal income tax withheld. If any is from Form(s) 1099, check ▶ ☐	24e	
	Other payments: **f** Form 2439 ; **g** Form 4136 ; Total ▶	24h	
25	**Total payments.** Add lines 24c through 24e, and 24h ▶	25	
26	Estimated tax penalty (see page 16 of the instructions)	26	
27	**Tax due.** If line 25 is smaller than the total of lines 23 and 26, enter amount owed	27	
28	**Overpayment.** If line 25 is larger than the total of lines 23 and 26, enter amount overpaid	28	
29	Amount of line 28 to be: **a Credited to 2001 estimated tax** ▶ ; **b Refunded** ▶	29	

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than fiduciary) is based on all information of which preparer has any knowledge.

▶ Signature of fiduciary or officer representing fiduciary | Date | ▶ EIN of fiduciary if a financial institution (see page 6 of the instructions)

Paid Preparer's Use Only

Preparer's signature ▶ | Date | Check if self-employed ▶ ☐ | **Preparer's SSN or PTIN**

Firm's name (or yours if self-employed), address, and ZIP code ▶ | EIN ▶ | Phone no. ( )

For Paperwork Reduction Act Notice, see the separate instructions. Cat. No. 11370H Form **1041** (2000)

Schedule A **Charitable Deduction.** Do not complete for a simple trust or a pooled income fund.

1	Amounts paid or permanently set aside for charitable purposes from gross income (see page 16)	1	
2	Tax-exempt income allocable to charitable contributions (see page 16 of the instructions)	2	
3	Subtract line 2 from line 1	3	
4	Capital gains for the tax year allocated to corpus and paid or permanently set aside for charitable purposes	4	
5	Add lines 3 and 4	5	
6	Section 1202 exclusion allocable to capital gains paid or permanently set aside for charitable purposes (see page 16 of the instructions)	6	
7	**Charitable deduction.** Subtract line 6 from 5. Enter here and on page 1, line 13	7	

Schedule B **Income Distribution Deduction**

1	Adjusted total income (from page 1, line 17) (see page 17 of the instructions)	1	
2	Adjusted tax-exempt interest	2	
3	Total net gain from Schedule D (Form 1041), line 16, column (1) (see page 17 of the instructions)	3	
4	Enter amount from Schedule A, line 4 (reduced by any allocable section 1202 exclusion)	4	
5	Capital gains for the tax year included on Schedule A, line 1 (see page 17 of the instructions)	5	
6	Enter any gain from page 1, line 4, as a negative number. If page 1, line 4, is a loss, enter the loss as a positive number	6	
7	**Distributable net income (DNI).** Combine lines 1 through 6. If zero or less, enter -0-	7	
8	If a complex trust, enter accounting income for the tax year as determined under the governing instrument and applicable local law — 8		
9	Income required to be distributed currently	9	
10	Other amounts paid, credited, or otherwise required to be distributed	10	
11	Total distributions. Add lines 9 and 10. If greater than line 8, see page 18 of the instructions	11	
12	Enter the amount of tax-exempt income included on line 11	12	
13	Tentative income distribution deduction. Subtract line 12 from line 11	13	
14	Tentative income distribution deduction. Subtract line 2 from line 7. If zero or less, enter -0-	14	
15	**Income distribution deduction.** Enter the smaller of line 13 or line 14 here and on page 1, line 18	15	

Schedule G **Tax Computation** (see page 18 of the instructions)

1	**Tax:** **a** ☐ Tax rate schedule or ☐ Schedule D (Form 1041)	1a			
	b Tax on lump-sum distributions (attach Form 4972)	1b			
	c Alternative minimum tax (from Schedule I, line 39)	1c			
	d **Total.** Add lines 1a through 1c ▶			1d	
2a	Foreign tax credit (attach Form 1116)	2a			
b	Check: ☐ Nonconventional source fuel credit ☐ Form 8834	2b			
c	General business credit. Enter here and check which forms are attached: ☐ Form 3800 or ☐ Forms (specify) ▶	2c			
d	Credit for prior year minimum tax (attach Form 8801)	2d			
3	**Total credits.** Add lines 2a through 2d ▶			3	
4	Subtract line 3 from line 1d			4	
5	Recapture taxes. Check if from: ☐ Form 4255 ☐ Form 8611			5	
6	Household employment taxes. Attach Schedule H (Form 1040)			6	
7	**Total tax.** Add lines 4 through 6. Enter here and on page 1, line 23 ▶			7	

Other Information

		Yes	No
1	Did the estate or trust receive tax-exempt income? If "Yes," attach a computation of the allocation of expenses Enter the amount of tax-exempt interest income and exempt-interest dividends ▶ $		
2	Did the estate or trust receive all or any part of the earnings (salary, wages, and other compensation) of any individual by reason of a contract assignment or similar arrangement?		
3	At any time during calendar year 2000, did the estate or trust have an interest in or a signature or other authority over a bank, securities, or other financial account in a foreign country? See page 20 of the instructions for exceptions and filing requirements for Form TD F 90-22.1. If "Yes," enter the name of the foreign country ▶		
4	During the tax year, did the estate or trust receive a distribution from, or was it the grantor of, or transferor to, a foreign trust? If "Yes," the estate or trust may have to file Form 3520. See page 20 of the instructions		
5	Did the estate or trust receive, or pay, any qualified residence interest on seller-provided financing? If "Yes," see page 20 for required attachment		
6	If this is an estate or a complex trust making the section 663(b) election, check here (see page 20) ▶ ☐		
7	To make a section 643(e)(3) election, attach Schedule D (Form 1041), and check here (see page 20) ▶ ☐		
8	If the decedent's estate has been open for more than 2 years, attach an explanation for the delay in closing the estate, and check here ▶ ☐		
9	Are any present or future trust beneficiaries skip persons? See page 20 of the instructions		

Schedule I Alternative Minimum Tax (see pages 20 through 25 of the instructions)

Part I—Estate's or Trust's Share of Alternative Minimum Taxable Income

1	Adjusted total income or (loss) (from page 1, line 17)	1	
2	Net operating loss deduction. Enter as a positive amount	2	
3	Add lines 1 and 2	3	
4	**Adjustments and tax preference items:**		
a	Interest	4a	
b	Taxes	4b	
c	Miscellaneous itemized deductions (from page 1, line 15b)	4c	
d	Refund of taxes	4d	( )
e	Depreciation of property placed in service after 1986	4e	
f	Circulation and research and experimental expenditures	4f	
g	Mining exploration and development costs	4g	
h	Long-term contracts entered into after February 28, 1986	4h	
i	Amortization of pollution control facilities	4i	
j	Installment sales of certain property	4j	
k	Adjusted gain or loss (including incentive stock options)	4k	
l	Certain loss limitations	4l	
m	Tax shelter farm activities	4m	
n	Passive activities	4n	
o	Beneficiaries of other trusts or decedent's estates	4o	
p	Tax-exempt interest from specified private activity bonds	4p	
q	Depletion	4q	
r	Accelerated depreciation of real property placed in service before 1987	4r	
s	Accelerated depreciation of leased personal property placed in service before 1987	4s	
t	Intangible drilling costs	4t	
u	Other adjustments	4u	
5	Combine lines 4a through 4u	5	
6	Add lines 3 and 5	6	
7	Alternative tax net operating loss deduction (see page 23 of the instructions for limitations)	7	
8	Adjusted alternative minimum taxable income. Subtract line 7 from line 6. Enter here and on line 13	8	
	Note: *Complete Part II below before going to line 9.*		
9	Income distribution deduction from line 27 below	9	
10	Estate tax deduction (from page 1, line 19)	10	
11	Add lines 9 and 10	11	
12	Estate's or trust's share of alternative minimum taxable income. Subtract line 11 from line 8	12	

If line 12 is:

- $22,500 or less, stop here and enter -0- on Schedule G, line 1c. The estate or trust is not liable for the alternative minimum tax.
- Over $22,500, but less than $165,000, go to line 28.
- $165,000 or more, enter the amount from line 12 on line 34 and go to line 35.

Part II—Income Distribution Deduction on a Minimum Tax Basis

13	Adjusted alternative minimum taxable income (from line 8)	13	
14	Adjusted tax-exempt interest (other than amounts included on line 4p)	14	
15	Total net gain from Schedule D (Form 1041), line 16, column (1). If a loss, enter -0-	15	
16	Capital gains for the tax year allocated to corpus and paid or permanently set aside for charitable purposes (from Schedule A, line 4)	16	
17	Capital gains paid or permanently set aside for charitable purposes from gross income (see page 24 of the instructions)	17	
18	Capital gains computed on a minimum tax basis included on line 8	18	( )
19	Capital losses computed on a minimum tax basis included on line 8. Enter as a positive amount	19	
20	Distributable net alternative minimum taxable income (DNAMTI). Combine lines 13 through 19. If zero or less, enter -0-	20	
21	Income required to be distributed currently (from Schedule B, line 9)	21	
22	Other amounts paid, credited, or otherwise required to be distributed (from Schedule B, line 10)	22	
23	Total distributions. Add lines 21 and 22	23	
24	Tax-exempt income included on line 23 (other than amounts included on line 4p)	24	
25	Tentative income distribution deduction on a minimum tax basis. Subtract line 24 from line 23	25	
26	Tentative income distribution deduction on a minimum tax basis. Subtract line 14 from line 20. If zero or less, enter -0-	26	
27	**Income distribution deduction on a minimum tax basis.** Enter the smaller of line 25 or line 26. Enter here and on line 9	27	

Part III—Alternative Minimum Tax

Line	Description	Sub-line	Sub-amount		Line	Amount	
28	Exemption amount				28	$22,500	00
29	Enter the amount from line 12	29					
30	Phase-out of exemption amount	30	$75,000	00			
31	Subtract line 30 from line 29. If zero or less, enter -0-	31					
32	Multiply line 31 by 25% (.25)				32		
33	Subtract line 32 from line 28. If zero or less, enter -0-				33		
34	Subtract line 33 from line 29				34		
35	If the estate or trust completed Schedule D (Form 1041) and has an amount on line 24 or 26 (or would have had an amount on either line if Part V had been completed) (as refigured for the AMT, if necessary), go to Part IV below to figure line 35. **All others:** If line 34 is— • $175,000 or less, multiply line 34 by 26% (.26). • Over $175,000, multiply line 34 by 28% (.28) and subtract $3,500 from the result				35		
36	Alternative minimum foreign tax credit (see page 24 of instructions)				36		
37	Tentative minimum tax. Subtract line 36 from line 35				37		
38	Enter the tax from Schedule G, line 1a (minus any foreign tax credit from Schedule G, line 2a)				38		
39	**Alternative minimum tax.** Subtract line 38 from line 37. If zero or less, enter -0-. Enter here and on Schedule G, line 1c				39		

Part IV—Line 35 Computation Using Maximum Capital Gains Rates

Caution: *If the estate or trust did not complete Part V of Schedule D (Form 1041), complete lines 19 through 26 of Schedule D (as refigured for the AMT, if necessary) before completing this part.*

Line	Description	Sub-line	Sub-amount		Line	Amount	
40	Enter the amount from line 34				40		
41	Enter the amount from Schedule D (Form 1041), line 26 (as refigured for AMT, if necessary)	41					
42	Enter the amount from Schedule D (Form 1041), line 24 (as refigured for AMT, if necessary)	42					
43	Add lines 41 and 42. If zero or less, enter -0-	43					
44	Enter the amount from Schedule D (Form 1041), line 21 (as refigured for AMT, if necessary)	44					
45	Enter the **smaller** of line 43 or line 44				45		
46	Subtract line 45 from line 40. If zero or less, enter -0-				46		
47	If line 46 is $175,000 or less, multiply line 46 by 26% (.26). Otherwise, multiply line 46 by 28% (.28) and subtract $3,500 from the result ▶				47		
48	Enter the amount from Schedule D (Form 1041), line 35 (as figured for the regular tax)				48		
49	Enter the **smallest** of line 40, line 41, or line 48				49		
50	Multiply line 49 by 10% (.10) ▶				50		
51	Enter the **smaller** of line 40 or line 41				51		
52	Enter the amount from line 49				52		
53	Subtract line 52 from line 51. If zero or less, enter -0-				53		
54	Multiply line 53 by 20% (.20) ▶				54		
55	Enter the amount from line 40				55		
56	Add lines 46, 49, and 53				56		
57	Subtract line 56 from line 55				57		
58	Multiply line 57 by 25% (.25) ▶				58		
59	Add lines 47, 50, 54, and 58				59		
60	If line 40 is $175,000 or less, multiply line 40 by 26% (.26). Otherwise, multiply line 40 by 28% (.28) and subtract $3,500 from the result				60		
61	Enter the **smaller** of line 59 or line 60 here and on line 35 ▶				61		

SCHEDULE D (Form 1041)

Department of the Treasury Internal Revenue Service

Capital Gains and Losses

▶ **Attach to Form 1041 (or Form 5227). See the separate instructions for Form 1041 (or Form 5227).**

OMB No. 1545-0092

2000

Name of estate or trust	Employer identification number

Note: *Form 5227 filers need to complete* ***only*** *Parts I and II.*

Part I Short-Term Capital Gains and Losses—Assets Held One Year or Less

	(a) Description of property (Example, 100 shares 7% preferred of "Z" Co.)	(b) Date acquired (mo., day, yr.)	(c) Date sold (mo., day, yr.)	(d) Sales price	(e) Cost or other basis (see page 27)	(f) Gain or (Loss) (col. (d) less col. (e))
1						

2	Short-term capital gain or (loss) from Forms 4684, 6252, 6781, and 8824	2	
3	Net short-term gain or (loss) from partnerships, S corporations, and other estates or trusts	3	
4	Short-term capital loss carryover. Enter the amount, if any, from line 9 of the 1999 Capital Loss Carryover Worksheet	4	( )
5	**Net short-term gain or (loss).** Combine lines 1 through 4 in column (f). Enter here and on line 14 below ▶	5	

Part II Long-Term Capital Gains and Losses—Assets Held More Than One Year

	(a) Description of property (Example, 100 shares 7% preferred of "Z" Co.)	(b) Date acquired (mo., day, yr.)	(c) Date sold (mo., day, yr.)	(d) Sales price	(e) Cost or other basis (see page 27)	(f) Gain or (Loss) (col. (d) less col. (e))	(g) 28% Rate Gain or (Loss) *(see instr. below)
6							

			(f)	(g)
7	Long-term capital gain or (loss) from Forms 2439, 4684, 6252, 6781, and 8824	7		
8	Net long-term gain or (loss) from partnerships, S corporations, and other estates or trusts	8		
9	Capital gain distributions	9		
10	Gain from Form 4797, Part I	10		
11	Long-term capital loss carryover. Enter in both columns (f) and (g) the amount, if any, from line 14, of the 1999 Capital Loss Carryover Worksheet	11	( )	( )
12	Combine lines 6 through 11 in column (g)	12		
13	**Net long-term gain or (loss).** Combine lines 6 through 11 in column (f). Enter here and on line 15 below ▶	13		

***28% rate gain or loss** includes **all** "collectibles gains and losses" (as defined on page 28 of the instructions) and up to 50% of the eligible gain on qualified small business stock (see page 26 of the instructions).

Part III Summary of Parts I and II

			(1) Beneficiaries' (see page 28)	(2) Estate's or trust's	(3) Total
14	**Net short-term gain or (loss)** (from line 5 above)	14			
15	**Net long-term gain or (loss):**				
a	28% rate gain or (loss) (from line 12 above)	15a			
b	Unrecaptured section 1250 gain (see line 17 of the worksheet on page 29)	15b			
c	Total for year (from line 13 above)	15c			
16	**Total net gain or (loss).** Combine lines 14 and 15c ▶	16			

Note: *If line 16, column (3), is a net gain, enter the gain on Form 1041, line 4. If lines 15c and 16, column (2), are net gains, go to Part V, and* ***do not*** *complete Part IV. If line 16, column (3), is a net loss, complete Part IV and the* ***Capital Loss Carryover Worksheet,*** *as necessary.*

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Part IV Capital Loss Limitation

17	Enter here and enter as a (loss) on Form 1041, line 4, the **smaller** of:		
a	The loss on line 16, column (3) **or**		
b	$3,000	17	( )

If the loss on line 16, column (3), is more than $3,000, ***or*** *if Form 1041, page 1, line 22, is a loss, complete the* ***Capital Loss Carryover Worksheet*** *on page 30 of the instructions to determine your capital loss carryover.*

Part V Tax Computation Using Maximum Capital Gains Rates (Complete this part **only** if both lines 15c and 16 in column (2) are gains, and Form 1041, line 22 is more than zero.)

18	Enter taxable income from Form 1041, line 22			18	
19	Enter the **smaller** of line 15c or 16 in column (2)		19		
20	If you are filing Form 4952, enter the amount from Form 4952, line 4e		20		
21	Subtract line 20 from line 19. If zero or less, enter -0-		21		
22	Combine lines 14 and 15a, column (2). If zero or less, enter -0-		22		
23	Enter the **smaller** of line 15a, column (2), or line 22, but not less than zero		23		
24	Enter the amount from line 15b, column (2)		24		
25	Add lines 23 and 24		25		
26	Subtract line 25 from line 21. If zero or less, enter -0-			26	
27	Subtract line 26 from line 18. If zero or less, enter -0-			27	
28	Enter the **smaller** of line 18 or $1,750		28		
29	Enter the **smaller** of line 27 or line 28		29		
30	Subtract line 21 from line 18. If zero or less, enter -0-		30		
31	Enter the **larger** of line 29 or line 30 ▶		31		
32	Tax on amount on line 31 from the 2000 Tax Rate Schedule			32	
	Note: *If the amounts on lines 28 and 29 are the same, skip lines 33 through 36 and go to line 37.*				
33	Enter the amount from line 28		33		
34	Enter the amount from line 27		34		
35	Subtract line 34 from line 33. If zero or less, enter -0- ▶		35		
36	Multiply line 35 by 10% (.10)			36	
	Note: *If the amounts on lines 18 and 28 are the same, skip lines 37 through 50 and go to line 51.*				
37	Enter the **smaller** of line 18 or line 26		37		
38	Enter the amount from line 35		38		
39	Subtract line 38 from line 37 ▶		39		
40	Multiply line 39 by 20% (.20)			40	
	Note: *If line 25 is zero or blank, skip lines 41 through 50 and go to line 51.*				
41	Enter the **smaller** of line 21 or line 24		41		
42	Add lines 21 and 31	42			
43	Enter the amount from line 18	43			
44	Subtract line 43 from line 42. If zero or less, enter -0-		44		
45	Subtract line 44 from line 41. If zero or less, enter -0- ▶		45		
46	Multiply line 45 by 25% (.25)			46	
	Note: *If line 23 is zero or blank, skip lines 47 through 50 and go to line 51.*				
47	Enter the amount from line 18		47		
48	Add lines 31, 35, 39, and 45		48		
49	Subtract line 48 from line 47		49		
50	Multiply line 49 by 28% (.28)			50	
51	Add lines 32, 36, 40, 46, and 50			51	
52	Tax on the amount on line 18 from the 2000 Tax Rate Schedule			52	
53	**Tax on all taxable income (including capital gains).** Enter the **smaller** of line 51 or line 52 here and on line 1a of Schedule G, Form 1041			53	

SCHEDULE J (Form 1041)

Department of the Treasury Internal Revenue Service

Accumulation Distribution for Certain Complex Trusts

▶ Attach to Form 1041.

▶ See the Instructions for Form 1041.

OMB No. 1545-0092

2000

Name of trust | **Employer identification number**

Part I **Accumulation Distribution in 2000**

Note: *See the Form 4970 instructions for certain income that minors may exclude and special rules for multiple trusts.*

1	Other amounts paid, credited, or otherwise required to be distributed for 2000 (from Schedule B of Form 1041, line 10)			1
2	Distributable net income for 2000 (from Schedule B of Form 1041, line 7)	2		
3	Income required to be distributed currently for 2000 (from Schedule B of Form 1041, line 9)	3		
4	Subtract line 3 from line 2. If zero or less, enter -0-			4
5	Accumulation distribution for 2000. Subtract line 4 from line 1			5

Part II **Ordinary Income Accumulation Distribution** (Enter the applicable throwback years below.)

Note: *If the distribution is thrown back to more than five years (starting with the earliest applicable tax year beginning after 1968), attach additional schedules. (If the trust was a simple trust, see Regulations section 1.665(e)-1A(b).)*		**Throwback year ending** 19	**Throwback year ending** 19	**Throwback year ending** 19	**Throwback year ending** 19	**Throwback year ending** 19 ....
6 Distributable net income (see page 31 of the instructions)	6					
7 Distributions (see page 31 of the instructions)	7					
8 Subtract line 7 from line 6	8					
9 Enter amount from page 2, line 25 or line 31, as applicable	9					
10 Undistributed net income Subtract line 9 from line 8	10					
11 Enter amount of prior accumulation distributions thrown back to any of these years	11					
12 Subtract line 11 from line 10	12					
13 Allocate the amount on line 5 to the earliest applicable year first. Do not allocate an amount greater than line 12 for the same year (see page 31 of the instructions)	13					
14 Divide line 13 by line 10 and multiply result by amount on line 9	14					
15 Add lines 13 and 14	15					
16 Tax-exempt interest included on line 13 (see page 31 of the instructions)	16					
17 Subtract line 16 from line 15	17					

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Part III Taxes Imposed on Undistributed Net Income (Enter the applicable throwback years below.) (See page 31 of the instructions.)

Note: *If more than five throwback years are involved, attach additional schedules. If the trust received an accumulation distribution from another trust, see Regulations section 1.665(d)-1A.*

If the trust elected the alternative tax on capital gains (repealed for tax years beginning after 1978), **skip** lines 18 through 25 and **complete** lines 26 through 31.		**Throwback year ending** 19	**Throwback year ending** 19	**Throwback year ending** 19	**Throwback year ending** 19	**Throwback year ending** 19 ....
18 Regular tax	18					
19 Trust's share of net short-term gain	19					
20 Trust's share of net long-term gain.	20					
21 Add lines 19 and 20. . . .	21					
22 Taxable income	22					
23 Enter percent. Divide line 21 by line 22, but do not enter more than 100%	23	%	%	%	%	%
24 Multiply line 18 by the percentage on line 23. . .	24					
25 Tax on undistributed net income. Subtract line 24 from line 18. Enter here and on page 1, line 9.	25					
Do not complete lines 26 through 31 unless the trust elected the alternative tax on long-term capital gain.						
26 Tax on income other than long-term capital gain . .	26					
27 Trust's share of net short-term gain	27					
28 Trust's share of taxable income less section 1202 deduction.	28					
29 Enter percent. Divide line 27 by line 28, but do not enter more than 100%	29	%	%	%	%	%
30 Multiply line 26 by the percentage on line 29. . .	30					
31 Tax on undistributed net income. Subtract line 30 from line 26. Enter here and on page 1, line 9	31					

Part IV Allocation to Beneficiary

Note: *Be sure to complete **Form 4970**, Tax on Accumulation Distribution of Trusts.*

Beneficiary's name				Identifying number
Beneficiary's address (number and street including apartment number or P.O. box)		**(a)** This beneficiary's share of line 13	**(b)** This beneficiary's share of line 14	**(c)** This beneficiary's share of line 16
City, state, and ZIP code				
32 Throwback year 19	32			
33 Throwback year 19	33			
34 Throwback year 19	34			
35 Throwback year 19	35			
36 Throwback year 19	36			
37 Total. Add lines 32 through 36. Enter here and on the appropriate lines of Form 4970.	37			

SCHEDULE K-1 (Form 1041)

Department of the Treasury
Internal Revenue Service

Beneficiary's Share of Income, Deductions, Credits, etc.

for the calendar year 2000, or fiscal year

beginning .... , 2000, ending .... , 20 ....

▶ Complete a separate Schedule K-1 for each beneficiary.

OMB No. 1545-0092

2000

Name of trust or decedent's estate

☐ Amended K-1
☐ Final K-1

Beneficiary's identifying number ▶

Estate's or trust's EIN ▶

Beneficiary's name, address, and ZIP code

Fiduciary's name, address, and ZIP code

(a) Allocable share item		(b) Amount	(c) Calendar year 2000 Form 1040 filers enter the amounts in column (b) on:
1 Interest	1		Schedule B, Part I, line 1
2 Ordinary dividends	2		Schedule B, Part II, line 5
3 Net short-term capital gain	3		Schedule D, line 5
4 Net long-term capital gain: a 28% rate gain	4a		Schedule D, line 12, column (g)
b Unrecaptured section 1250 gain	4b		Line 11 of the worksheet for Schedule D, line 25
c Total for year	4c		Schedule D, line 12, column (f)
5a Annuities, royalties, and other nonpassive income before directly apportioned deductions	5a		Schedule E, Part III, column (f)
b Depreciation	5b		Include on the applicable line of the appropriate tax form
c Depletion	5c		
d Amortization	5d		
6a Trade or business, rental real estate, and other rental income before directly apportioned deductions (see instructions)	6a		Schedule E, Part III
b Depreciation	6b		Include on the applicable line of the appropriate tax form
c Depletion	6c		
d Amortization	6d		
7 Income for minimum tax purposes	7		
8 Income for regular tax purposes (add lines 1, 2, 3, 4c, 5a, and 6a)	8		
9 Adjustment for minimum tax purposes (subtract line 8 from line 7)	9		Form 6251, line 12
10 Estate tax deduction (including certain generation-skipping transfer taxes)	10		Schedule A, line 27
11 Foreign taxes	11		Form 1116 or Schedule A (Form 1040), line 8
12 Adjustments and tax preference items (itemize):			
a Accelerated depreciation	12a		Include on the applicable line of Form 6251
b Depletion	12b		
c Amortization	12c		
d Exclusion items	12d		2001 Form 8801
13 Deductions in the final year of trust or decedent's estate:			
a Excess deductions on termination (see instructions)	13a		Schedule A, line 22
b Short-term capital loss carryover	13b	( )	Schedule D, line 5
c Long-term capital loss carryover	13c	( )	Schedule D, line 12, columns (f) and (g)
d Net operating loss (NOL) carryover for regular tax purposes	13d	( )	Form 1040, line 21
e NOL carryover for minimum tax purposes	13e		See the instructions for Form 6251, line 20
f	13f		Include on the applicable line of the appropriate tax form
g	13g		
14 Other (itemize):			
a Payments of estimated taxes credited to you	14a		Form 1040, line 59
b Tax-exempt interest	14b		Form 1040, line 8b
c	14c		Include on the applicable line of the appropriate tax form
d	14d		
e	14e		
f	14f		
g	14g		
h	14h		

For Paperwork Reduction Act Notice, see the Instructions for Form 1041. Cat. No. 11380D **Schedule K-1 (Form 1041) 2000**

Works Cited

Clifford, Denis. Estate Planning Basics. Berkley, CA; Nolo, 1999.

Holzer, Bambi with Elaine Floyd. Set for Life. New York; John Wiley & Sons, Inc., 2000.

IRS. Form 1041, Schedule D (Form 1041), Schedule J (Form 1041), and Schedule K-1 (Form 1041). [Online] Available http://www.irs.gov/prod/forms_pubs/forms.html, April 27, 2001.

Lav, Iris and Joel Friedman. "Estate Tax Repeal: A Costly Windfall for the Wealthiest Americans". *Center on Budgets and Policy Priorities.* [Online] Available http://www.cbpp.org/5-25-00tax.htm, April 18, 2001.

Spinale, Laura. Smart Guide to Estate Planning. New York; John Wiley & Sons, Inc., 1999.

There is a caution to keep in mind with trusts. If you will have significant debts or estate taxes due at your death, you should estimate these amounts. Your estimate should be a fair appraisal of what you will owe. Then you should assign certain property to meet these obligations.

Another type of trust is a testamentary trust. A testamentary trust starts after your death, but allows you "to be more specific about who should get your assets" and how much each beneficiary gets (Holzer and Floyd 216). A testamentary trust can be used to create a charitable remainder trust. This trust would allow you to provide assets for the remainder of your beneficiary's life and then the remainder of the assets in the trust would be transferred to the charity of your choice. This approach allows you to reduce the estate taxes due on the estate. (A charitable trust can also be created as a living trust.)

Another effective trust is the AB trust. A married couple can use an AB trust, if their combined assets exceed the personal estate tax exemption; but if split, their assets owned individually could fall into the exemption range. Both individuals create an A trust and a B trust. However, only one of the A trusts will be used, same for the B trust. The A trust of the first spouse to die will be effective, and the B trust of the surviving spouse will be used.

Upon the death of the first spouse, the property is split into two trusts. The deceased spouse's A trust is now effective and the A trust is irrevocable. At this point, though, the B trust for the surviving spouse is still revocable. The surviving spouse is the beneficiary of the A trust and has "rights to receive all income from the trust property, to use trust property, and to spend trust principal in any amount for health, education, support or maintenance in accord with his or her accustomed manner of living (Clifford 9/8).

Upon the death of the surviving spouse, the B trust becomes irrevocable and the successor trustee disperses the assets in the A and B trusts according to the trust document. The trust is setup for the couple to maintain control of the assets during their lifetime. Upon the death of the first spouse, the surviving spouse becomes the trustee; however, the trust should state a successor trustee to become effective after the death of the surviving spouse.

The AB trust is created to reduce the estate tax burden. This method is effective because taxes are determined at the time of death of the first spouse. If the property in the A trust is less than the exemption amount, at the time of death of the first spouse, no estate tax is paid. However, if the amount in the A trust is greater than the estate tax exemption, taxes are paid at this time. When the surviving spouse dies, the A trust is not subject to taxes, but the B trust will be evaluated for estate taxes.

An AB trust may not be recommended for every couple. Couples with children from a previous marriage may find that another trust would best suit their needs. Married couples in their forties or fifties may prefer to wait several years before entering their assets into a trust. Couples with one spouse significantly younger create a situation where one spouse may greatly outlive the other. This type of situation would be best handled using other estate planning methods. Additionally, couples with a very large estate will want to use more extensive tax planning.

AB trusts also have disadvantages. Restrictions are placed on the surviving spouse's use of the assets in the A trust. The surviving spouse must file a trust tax return, in addition to filing a personal tax return. The trust tax return requires the surviving spouse to file for a tax ID number and maintain separate records for the trust.

Another trust for married couples is a Qualified Terminable Interest Property Trust (QTIP trust). A QTIP trust allows for the transfer of assets to your spouse upon your death, which will be transferred to your beneficiaries upon the death of your spouse. Mostly couples with children from a previous marriage will elect to use this trust. The QTIP trust allows for the marital deduction – no estate tax is required on assets transferred to a spouse. The estate tax is determined from the amount remaining in the trust after the death of the surviving spouse. This can create a higher tax bill than would have developed if the assets were valued at the death of the first spouse. The increase in value is due to the restrictions placed on the surviving spouse's use of the trust assets, which will allow the trust to grow, and to the increase in the trust asset's fair value during the period between the two deaths.

Another trust for married couples that is similar, yet distinct from the AB trust and the QTIP trust, is the credit shelter trust. This trust is also for couples with combined assets over the estate tax exemption amount, but for a credit shelter trust all assets must be held individually. Upon the death of the first spouse, the exempt estate tax amount is transferred into a trust. The surviving spouse may use the proceeds, but again is restricted on using the principal of the trust. Upon the death of the surviving spouse, his or her trust is taxable, and both trusts are then transferred to the beneficiaries.

Generation skipping trusts are used to transfer your assets to your grandchildren. This trust is most effectively used for people with multi-million dollar estates. Still only $1 million, or $2 million for a couple, is allowed in the trust without creating a heavy tax burden (Spinale 92). If the principal in the trust exceeds the limit, a generation-skipping transfer tax is assessed in addition to estate taxes due. The generation-skipping transfer tax is 55 percent of the asset value in the trust (Spinale 93).

A generation skipping trust avoids having an estate taxed twice. The estate could be given to your children then they could pass it on to their children upon thier death. Although, this process creates a situation where the same assets are transferred and estate taxes are paid on the assets both times. This assumes your children have a substantial estate of their own, which is most typically the case. A generation skipping trust allows your children to use proceeds from the trust for your grandchildren, if necessary.

Trusts provide several options; however, you should make sure you understand all aspects of the various trusts before deciding which one is best for your needs. The advantages of trusts are the money that can be saved in estate taxes and the fact that trust documents are not made public record.

INSURANCE

Another method of passing assets at your death is through the use of insurance. Insurance is different from the methods previously discussed. It is purchased security to add to your estate, if necessary. The main goal of insurance is to supplement your income in the case of your death, so as to not leave your dependents financially strapped. In addition to purchasing life insurance to provide for your dependents, insurance policies can be purchased to pay estate taxes or debt due upon your death. Life insurance is subject to estate tax if when combined with other assets the estate exceeds the exemption amount.

Many types of insurance are available and the concerns for insurance coverage are different than the concerns for the previous estate-planning tools. The first step in determining what kind of insurance is necessary is to consider your needs. If you have dependents or others that depend on you for financial support, if you maintain the household for the family and assist the principal income earner of the family, or if there are substantial debts that will become due upon your death (excluding your mortgage) that your assets will not cover, you should consider purchasing a life insurance policy. Before purchasing a life insurance policy, you need to estimate to the best of your ability the financial resources that will be needed upon your death to sustain your dependents at a comfortable or comparable standard of living. For assistance in determining your life insurance needs, refer to Chapter 6 of Smart Guide to Estate Planning by Laura Spinale (copyright 1999).

The types of life insurance include term life insurance and cash-value policies with numerous plans for both types. Term insurance provides coverage for a certain time period, which you choose depending on your needs. If you die within that time period, your beneficiaries receive the value of the policy. Cash-value policies are a combination of insurance and investment. This type of policy provides your beneficiary with the value of the policy plus the money from the investments. Cash-value policies are more expensive than term life insurance, because you are providing money for investing in addition to paying the policy premium. One type of cash-value policy is survivorship life, which pays at the death of a spouse to pay estate taxes.

Life insurance is paid to your beneficiaries upon your death. The beneficiaries listed on the policy receive the value of the insurance policy, regardless what you have written in your will about who should receive the insurance benefits. Additionally, life insurance avoids probate and is free from income tax and may be free from estate tax if the total of the estate plus the insurance policy is less than the estate tax exemption amount. Otherwise, estate taxes are due on the policy proceeds.

GIFTING

One way to reduce your estate is to gift. Gifting allows you to give away your assets while still alive. Currently, tax laws allow each person to give a gift up to $10,000 per person per calendar year. Translated this means that if you are married with grown children, you can give your child $10,000 and your spouse can do the same. Additionally, you and your spouse can each give your child's spouse $10,000. This means that in one calendar year you can provide your child and his or her spouse with $40,000 of tax-free gifts. Additionally, you could also give your grandchildren $10,000 per year, as can your spouse.

Gifting can create significant savings to your estate tax. However, giving gifts of over $10,000 per person, per calendar year reduces the amount of the estate tax exemption by the excess. Giving a $15,000 gift in one calendar year to your favorite cousin will reduce your estate exemption amount by $5,000. This means that upon your death if the estate exemption amount is $1 million, your estate exemption due to the gift will be $995,000. Gifts of over $10,000 can be made without affecting your estate if they are made directly to a medical facility to pay medical bills or to an educational institution to pay for tuition costs only. Additionally, gifts can be made to qualified charities and to spouses with no impact on the exemption amount. Charitable gifts and trusts are discussed next.

Charitable Gifts and Trusts

Gifts given to qualified charities, despite the dollar value, are completely exempt from taxes, including estate taxes. Therefore, if you would want to leave your entire estate to charity, you can do so without worrying about the excessive estate taxes that will be due. Additionally, if you want to create a testamentary trust, you can receive income tax deductions during your lifetime.

Another trust that provides charity donations is a charitable remainder trust. A charitable remainder trust is an irrevocable trust that allows a charity to manage the trust property. A portion of the income from the trust assets is distributed to you or a person you designate. After a certain time period or at a specified time, your death or the death of a beneficiary, the charity receives the assets (Spinale 97).

Each of these methods for gifting to a charity reduces or eliminates your estate tax bill. By choosing a charitable remainder trust, you are able to benefit from the asset until your death and you still receive tax breaks for it. Gifting directly to a charity eliminates estate taxes due on that value of the assets gifted. However, for a charity to qualify for tax breaks, it must be a qualified tax-exempt organization.

Dying Intestate

Without an estate plan, the state determines who receives your assets and in what amounts. Most states have general guidelines about the percentage of the estate that will pass to a spouse, children, and/or parents of the deceased. An estate settled by the state will usually result in increased taxes and increased attorney fees, as family members try to settle the estate through the use of attorneys.

In addition to the increased costs on loved ones, this method of the state distributing assets can create hardship for the family emotionally. A family member may have been promised a specific asset that held sentimental value; however, the state has granted ownership of that asset to another. The state cannot take into account your wishes after you death, if you do not plan before, because you are not there to share your wishes. By planning, though, your wishes will be clear and the state will not be responsible for determining the placement of your assets. Additionally, by planning the taxes due on your estate can be reduced.

Proposed Changes to Estate Taxes

Currently, estate taxes have been in the news. It was an issue in the Presidential election in the fall and a concern for many U.S citizens. Both candidates had plans for revising the estate tax system. President Bush has presented his estate tax plan, which calls for repealing the estate tax. The plan proposed by President Bush would repeal federal estate taxes by 2009, which leads to the loss of estate tax revenues to the government by 2011 (Lav and Friedman 9).

The federal government has many issues to consider before finalizing a proposal. For example, the estate tax is a compliment to the income tax that will be lost when a repeal is passed. Furthermore, in the next several years as Baby Boomers age, Medicare and Social Security costs will increase governmental expenditures. Changes in the estate tax can lead to income tax sheltering by wealthy individuals.

The estate tax compliments and completes the income tax due to value appreciation. During life when assets that appreciate in value are sold, the seller must pay capital gains tax on the value in excess of the cost basis for that asset. Capital gains tax on sold items is acknowledged when filing income taxes. Estate taxes are the capital gains tax on items the deceased owned at death. This estate tax allows the recipient to value the asset at its worth when received from the deceased's estate instead of the cost value paid by the deceased. This method of tracking appreciation is much easier for the new owner.

Additionally, there is an argument that estate tax is double taxation of the income earned by the deceased. This argument seems valid if the deceased paid taxes on the income he or she received during life and the assets, including property, stocks, artwork, and jewelry, he or she purchased using previously taxed income. However, all of these items are likely to increase in value from the date of purchase until the owner's death. This increase in value is what makes the estate so valuable and can cause it to exceed the personal estate tax exemption.

The next issue regarding estate tax repeal is the loss of revenue for the government. Although estate tax is not a major source of income for the government, repealing it could reduce yearly revenue by anywhere between $50 billion and $75 billion a year after 2011 (Lav and Friedman 9). Full repeal of the income tax will not be felt until 2011 under the proposed plan. At this time, many Baby Boomers will be eligible for Social Security, Medicare, and Medicaid. The revenue from estate taxes could help the government cover the increasing costs associated with the aging of the Baby Boomers. (Lav and Friedman 4)

Another issue, which could increase the loss of revenue, is that with the proposal to repeal the estate tax, gift taxes and generation-skipping transfer taxes would also be repealed. Without these taxes, wealthy individuals can find ways to shelter income from income tax, reducing the income tax revenue that would have been generated by the government. Wealthy individuals can transfer valuable assets to trusted family or friends in lower tax brackets to sell items such as stock and pay less capital gains tax. The family members or friends could then give the cash, less some proceeds for their efforts, to the wealthy individual. Items can be given to foreigners to sell, because they would not be required to pay capital gains taxes on U.S. stocks.

Furthermore, estate tax repeal affects states. Many states currently receive a "pick-up" tax from the federal government estate tax, instead of requiring the estate to pay taxes to the state. States that require payment from the estate also receive some funds from the federal government, which will be lost with the federal estate tax repeal. Since state death tax is tied to the federal estate tax, many states will not be able to collect state death taxes after the federal estate tax is repealed; unless the states can pass a new law. State legislators will probably wait until the federal government is closer to passing the proposal before state governments begin acting on any changes to the estate taxing process.

HIRING PROFESSIONALS TO PLAN YOUR ESTATE

Planning an estate can be a difficult task. You must comply with laws and determine the plans that best meet your goals. It will be worthwhile to hire a professional or team of professionals to assist you in planning your estate. The cost is well worth the peace of mind and the assistance you will receive.

The basic professional is an attorney. You may want to decide between a general practice attorney and an estate attorney. Both can assist you in understanding possible estate planning tools and can write your will and trusts to comply with legal requirements. However, the estate attorney is well versed in estate planning laws and options and would be best for large, complicated estate plans. You must be the one to decide to whom to leave your possessions and who should serve as your executor. Your attorney's role is to be a guide and an advisor in the planning process.

Another professional that may be helpful is your accountant. He or she knows your financial situation and should also know your financial goals. Your accountant will be able to provide information about your financial situation that will be helpful in decision-making. Additionally, your accountant can help to ensure your estate plans will not interfere with your current financial goals.

Another individual that might be helpful is a financial planner. However, some accountants also have a financial planning designation and can fulfill both roles. A financial planner can help you determine how to grow and maintain your estate. An estate planner is a financial planner that specializes in estate planning versus a financial planner that provides assistance in many areas. Both should be able to provide ways to ensure your estate will meet the goals you find important. Again, a specialist may be better for complex plans.

An insurance agent, an appraiser, and a charitable trust executive are other professionals that may assist with estate planning. An insurance agent can help you find a policy to support your family or cover estate taxes. You may want to hire an appraiser to assist in determining the value of the assets in your estate. If you plan on donating a significant amount of money to charity, a charitable trust executive can help reduce your tax bill.

All of these professionals may not be necessary for your estate planning needs. It is up to you which ones you choose to assist you. One factor to keep in mind is how complex your plans will be and how much money you are willing to spend to make your estate arrangements. The cost of retaining several professionals can be expensive. An attorney should definitely be one of your professional advisers and can assist you in determining your need for other professional help.

These professionals may be costly, but will help you create a legally compliant estate plan and will reduce your estate taxes significantly. The fees charged by these professionals can vary. Financial planners or insurance agents may charge a commission for the services they conduct. However, these professionals and the others mentioned previously may charge you per hour or per project. There is also the possibility of a combination of per hour or per project with commission.

When hiring professionals to assist with your estate planning, you want to find out how they charge for their time and if there are additional costs associated with their services. You will want to meet with each professional before you make you decision of who to retain. The professionals should be willing to discuss their degree and credentials. You should also make sure the professionals you hire would be willing to work together, if you request. Additionally, any professionals you hire should provide you with a list of references upon inquiry.

You should choose professionals that meet your standards, seem knowledgeable, and seem interested in helping you with your needs. The professionals you hire must be able to help you plan your estate; therefore, you will want to make sure that in addition to understanding what you have agreed upon as adequate service that you feel comfortable with them and that you feel they are trustworthy. Estate planning can be a rough process, so it is important to find people that will be enjoyable to work with as well as people that are willing to provide service as needed to fulfill you estate planning goals.

For planning your estate, you want to ensure that you choose professionals with whom you can work well. Estate planning is a task that you would probably prefer to avoid. Except for the fact that if you do not plan, your loved ones may lose much of your assets or your assets will not be distributed in the manner you want. You must comply with laws and determine the plans that best meet your goals. It will be worthwhile to hire a professional or team of professionals to assist you in planning your estate. The cost is well worth the peace of mind and the assistance you will receive.

Postponing Estate Planning

Part of setting down to plan your estate is deciding your goals and priorities and creating the plan that fits your needs. You may know what assets you want to leave to each beneficiary and who should serve as your executor, but more than likely these are some choices that you will need to make. Additionally, if you have not already determined these decisions you will need to be making up your mind.

Making decisions about your estate can be difficult. Having to choose your beneficiaries today may seem premature, but remember that planning early is preferable to not planning. By not planning, you are creating a stressful situation for your loved ones and, potentially, increasing your estate tax burden. With the advice and suggestions received from your professional adviser or team of professionals, you can feel more comfortable that you have made the right decisions.

Planning your estate should not create fear, but peace of mind. Preparation creates an advantage. Your loved ones know what to expect versus the uncertainty and the anxiety that can accompany uncertainty. Your loved ones can find comfort in their time of loss by knowing that you loved them enough to take your time to arrange plans that will make this difficult time a little easier for them.

Some people feel that by planning their estate they are inviting death. This is the wrong point of view; instead, by planning you are creating peace of mind and a more enjoyable life. You are free from the stress and concern of what should become of your loved ones and your assets if you should die unexpectedly.

Another reason some people decide to delay estate planning is because they worry about changes that may occur and they are worried about losing control of their assets. Planning an estate allows you to have your say. If you are worried about losing control of your assets, you can create plans that allow you to maintain control over your assets until your death. If you feel comfortable creating an irrevocable trust, you may do so. Otherwise to maintain control over your assts, create a revocable trust and write a will.

Both of these items can be changed as often as needed. The creator of the trust can maintain it, or if he or she feels more comfortable appointing someone else to handle the affairs of the trust, that is also a possibility.

Planning Your Estate

The hardest part of estate tax planning is getting started. This requires you to make many decisions. Decisions about what professionals are necessary to help plan your estate and to whom you will leave your assets. If you feel comfortable with the professionals you hire and can decide what you want to leave to your beneficiaries, the rest of the work belongs to the professionals. From this point, it is their place to tell you the plans that best suit your needs.

After your plans are finalized, you will want to want to inform your family where to find your will and other necessary documents upon your death. You will want to choose a place to keep all your estate information. Your estate information should include a list of the items in your file and the location of the original documents (wills, trusts, birth certificates, etc.). Other information necessary in your estate file is the names and contact information of the executor of your will, the trustees of your trusts, and the professionals that have assisted in establishing your estate plans. Your estate file can be in a filing cabinet, desk drawer, or even a box, as long as it is identifiable and you inform people involved with your estate where the file is. However, it is recommended that you store your will, birth certificate, and trust documents in a safe place, such as a safe-deposit box.

By following these simple steps, you will find estate planning is not as difficult as you had imagined. With information about wills, trusts, insurance, and gifting, and with your professional adviser or team of professionals you are able to decide which tools best fit your estate needs. Now is the time to start planning!

The following table, Table 16.2 from Set for Life by Bambi Holzer with Elaine Floyd, provides the amounts of the personal exemption and the unified tax credit for the current year through the years until the current plan to increase the estate tax exemption amount is met.

INCREASE IN EXEMPTION EQUIVALENT AND UNIFIED CREDIT

YEAR	EXEMPTION EQUIVALENT	UNIFIED CREDIT
2001	$ 675,000	$ 220,550
2002	700,000	229,800
2003	700,000	229,800
2004	850,000	287,300
2005	950,000	326,300
2006	1,000,000	345,800